IN THE

Supreme Court of the United States

October Term, 1963

No. 292

MISSOURI PACIFIC RAILROAD COMPANY,
Petitioner,

v.

ELMORE & STAHL,
Respondent.

BRIEF OF UNITED FRESH FRUIT & VEGETABLE ASSOCIATION, TEXAS CITRUS AND VEGETABLE GROWERS AND SHIPPERS, CALIFORNIA GRAPE & TREE FRUIT LEAGUE, NORTHWEST HORTICULTURAL COUNCIL, FLORIDA FRUIT & VEGETABLE ASSOCIATION, INTERNATIONAL APPLE ASSOCIATION, INC., WESTERN GROWERS ASSOCIATION, GROWERS AND SHIPPERS LEAGUE OF FLORIDA, SOCIETY OF AMERICAN FLORISTS AND ORNAMENTAL HORTICULTURISTS, NATIONAL FISHERIES INSTITUTE, INC. and EASTERN FREEZERS ASSOCIATION, AS *AMICI CURIAE*, IN SUPPORT OF RESPONDENT, ELMORE & STAHL

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I. INTEREST OF *AMICI CURIAE*

The above-named associations hereby file their brief, as *amici curiae*, in this case, pursuant to Rule 42(2) of the Rules of the Supreme Court. This brief is accompanied by the written consent to its filing from counsel for Elmore

& Stahl and the Missouri Pacific Railroad Company, the parties to this action.

The *amici curiae* are trade associations, operating in the United States, consisting of shippers, growers, wholesalers, terminal market operators, brokers, retailers, importers, exporters, and members of allied industries dealing in perishable commodities. A more detailed description of the organization, nature and interest of each is set out in the appendix to this brief. The members of these associations are directly and significantly affected by the legal rules and principles of liability applicable to the transportation of perishables in interstate commerce. The issues presented by the instant case will vitally affect the economic position of all industries dealing in perishables.

II. QUESTION PRESENTED

Where, in an action against a common carrier for damage to an interstate shipment of fruit, the jury finds that the fruit was, when tendered to the carrier for transportation, in good order and condition, and was, on delivery by the carrier at destination, in worse condition than was reasonably to have been anticipated, and where the jury finds further that the damage was not caused by an inherent vice or defect in the fruit, nor by the act or default of the shipper, is the plaintiff entitled to judgment regardless of any finding of the jury relative to negligence of the carrier?

III. SUMMARY OF ARGUMENT

It is an old and well-established rule of the common law that a carrier is liable for damages sustained to goods which it transports, regardless of fault, unless the carrier can establish one of the specified exceptions to liability permitted by law and provided by the contract of carriage. Unless, therefore, in the instant case, the carrier established that the damage to the fruit was caused by an inherent defect or vice in the produce, or by the act or default of the shipper, the respondent was entitled to judgment.

The rule of liability without fault applies to all commodities, including "perishables". All commodities are more or less perishable and the enunciation of a different rule in this context would, in effect, eliminate the established requirement that the carrier establish inherent vice to exonerate itself from liability.

The bill of lading under which the shipment moved and the rules of the tariff applicable to said shipment do not provide a different rule. The bill of lading, by its express terms, provides that the carrier shall be liable as at common law and the tariff rules relied upon by the petitioner do not, by their terms or intent, provide otherwise. The Interstate Commerce Commission, in approving the tariff rules in question, specifically pointed out that it was not authorizing any change pertaining to a rule of liability or to burden of proof.

If either the bill of lading or the rules of the tariff did, in fact, permit the carrier to diminish its common law liability, such contract or rule would be violative of Section 20(11) of the Interstate Commerce Act (49 U. S. C.),

which codifies and imposes the common law rule of liability and specifically prohibits any carrier from limiting or diminishing that liability by contract, rule or otherwise.

Establishing the nature of the damage does not establish its cause. Proof, therefore, that the damage in question was decay, would not establish the defense of inherent vice. The carrier is exonerated from liability only if it establishes a particular cause for the damage from which it is exempted from liability. Proof that decay resulted does not establish that it was caused by an idiosyncracy, propensity, or quality inherent in the commodity. It is an effect (not a cause), for which no exemption is provided.

The rule of liability, which exonerates the carrier only if it can bring itself within one of the permissible exceptions, reflects sound public policy, wisely enunciated, and long-established. The reversal of this rule would create great mischief, subvert the intention of Congress, and unfairly place in jeopardy the rights of major segments of the shipping public.

The decision of the Supreme Court of Texas in the instant case properly sets forth the applicable federal rules of law, and the conclusions of the court in *Larry's Sandwiches* v. *Pacific Electric Railway Co.*, 318 F. 2d 690 (9th Cir. 1963), relied upon by the petitioner, are not supported by the authorities therein cited.

IV. ARGUMENT

POINT 1

At common law a carrier is liable for damage to merchandise which it transports regardless of the exercise of due care, unless it is established that the damage or loss resulted from one of the recognized and permitted exceptions. Where the plaintiff has established its *prima facie* case, the carrier bears the burden of bringing the cause of the loss within one of those exceptions.

This Court, on many occasions, has stated and reiterated the rule that at common law a carrier is liable for any damage sustained by commodities which it transports unless the carrier can establish one of the specified exceptions.

Secretary of Agriculture v. *U. S.*, 350 U. S. 162 (1956);
Chesapeake & Ohio Ry. Co. v. *Thompson Mfg. Co.*, 270 U. S. 416 (1926);
Chicago & Eastern Illinois R. Co. v. *Collins Produce Co.*, 249 U. S. 186 (1919);
Galveston H. & S. A. R. Co. v. *Wallace*, 223 U. S. 481 (1912);
Railroad Co. v. *Vancll*, 98 U. S. 479 (1878);
Bank of Kentucky v. *Adams Express Co.*, 93 U. S. 174 (1876);
Hall & Long v. *The Railroad Companies*, 13 Wall 367, 80 U. S. 367 (1871).

Sometimes this doctrine is described as liability without fault, and at other times it is referred to as a conclusive presumption of negligence or breach of duty. Thus,

this Court in *Hall & Long v. The Railroad Companies*, *supra*, at p. 372, stated in referring to a carrier's liability:

> "The law raises against him a conclusive presumption of misconduct, or breach of duty, in relation to every loss not caused by excepted perils. Even if innocent in fact he has consented by his contract to be dealt with as if he were not so."

In the instant case the petitioner asserts that although it failed in its attempt to bring the cause of the damage within one of the specified exceptions, the jury's finding relating to due care exonerated it from liability. However, as pointed out by the Circuit Court of Appeals (3rd Cir.) in *Commodity Credit Corp. v. Norton*, 167 F. 2d 161 (1948), such a position is untenable. The Court stated:

> "At common law, the common carrier is held to strict accountability, being absolutely liable for loss or damage to the goods surrendered to its custody without regard for the exercise of due care, unless, of course, the damage or loss flows from an excepted cause. Chicago & Eastern Illinois R. Co. v. Collins Produce Co., 1919, 249 U. S. 186, 192, 39 S. Ct. 189, 63 L. Ed. 552. The carrier is thus made the virtual insurer of the cargo.
>
> * * *
>
> As the cases already cited plainly establish, the carrier is responsible without regard to the exercise of due care even though the damage or loss be occasioned by the independent act of third persons. See United States v. Morgan, 1850, 11 How. 154, 162, 52 U. S. 154, 162, 13 L. Ed. 643. The manner of handling the cargo, therefore, would be entirely irrelevant except in the event of an affirmative finding by the jury of the existence of a latent defect, or unless the damage or loss

> is brought within another excepted peril which would give rise to the application of the rule of negligence. Consequently a finding that there was 'no rough handling' would not require a determination of the cause in favor of the defendant, sans the additional finding of a latent defect." (pp. 164-165)

The Interstate Commerce Commission, in considering bills of lading to be utilized by carriers, described the common law rule of liability in *The Matter of Bills of Lading*, 52 I. C. C. 671, 679 (1919) as follows:

> "Under the common law as it has been developed to the present day in its application to modern transportation conditions and practices, there has been little or no relaxation of the rigor of the rule of the common carrier's liability, but the exceptions have been extended to include loss, damage, and injury due to other causes, and a common carrier is now regarded as an insurer of the goods entrusted to its care and custody for transportation and as liable for all loss, damage or injury occurring to the goods while they are held by it in its capacity of a common carrier, except when such loss, damage or injury is caused by: (a) the act of God; (b) the public enemy; (c) the act of the shipper himself; (d) public authority; (e) or the inherent vice or nature of the goods."

In a suit against a common carrier, the plaintiff is not required to both prove its *prima facie* case and disprove the existence of a defense (*Galveston H. & S. A. R. Co.* v. *Wallace*, 223 U. S. 481 (1912)). If the damage is unexplained, the plaintiff is entitled to recover (The Patria, 125 Fed. 425, 426 (1903), aff'd 132 Fed. 971 (2nd Cir. 1904)). As stated by Michie on Carriers (1915), Vol. 1, section 989, p. 730:

> "So, where freight is lost or damaged while in the possession of a carrier, it cannot escape its common law responsibility by merely proving that the loss or damage was not occasioned by its negligence, or that it had used the utmost care and diligence. Carriers of goods being insurers are not relieved from liability by the fact that loss or damage happened from some unknown cause, or could not have been avoided by any human vigilance."

This Court stated in *Galveston H. & S. A. R. Co.* v. *Wallace, supra*:

> "The plaintiffs were not obliged both to prove their case and to disprove the existence of a defense. The carrier and its agents, having received possession of the goods, were charged with the duty of delivering them, or explaining why that had not been done. This must be so, because carriers not only have better means, but often the only means, of making such proof. If the failure to deliver was due to the act of God, the public enemy, or some cause against which it might lawfully contract, it was for the carrier to bring itself within such exception. In the absence of such proof, the plaintiffs were entitled to recover, and the judgment is affirmed." (p. 492)

The principles enunciated above apply to the common law in all fields of transportation, including maritime law. *Gilmore & Black, The Law of Admiralty* (1957), states at p. 119:

> "The general law of maritime carriage made the public carrier of goods by sea absolutely responsible for their safe arrival, unless loss or damage was caused by the Act of God or of the public enemy, or by the inherent vice of the goods or the fault of the shipper—*and* (even where the loss was caused by one of these) the car-

rier was not negligent or otherwise at fault. Except for the qualification indicated this liability did not rest on fault. All the shipper had to do to make his case was to prove receipt for carriage in good order, and non-delivery or delivery in bad order. If the carrier could not show that one of the 'exceptions' just listed was the cause of the loss or damage, he had to pay."[1]

This Court stated in *Commercial Molasses Corp.* v. *New York Tank Barge Corp.*, 314 U. S. 104 (1941), at p. 109:

"• • • one who has assumed the obligation of a common carrier can relieve himself of liability for failing to carry safely only by showing that the cause of loss was within one of the narrowly restricted exceptions which the law itself annexes to his undertaking, or for which it permits him to stipulate. The burden rests upon him to show that the loss was due to an excepted cause and that he has exercised due care to avoid it, not in consequence of his being an ordinarily 'bailee' but because he is a special type of bailee who has assumed the obligation of an insurer. Schnell v. The Vallescura, 293 U. S. 296, 304, and cases cited. See Coggs v. Bernard, 2 Ld. Raym. 909, 918.

For this reason, the shipowner, in order to bring himself within a permitted exception to the obligation to carry safely, whether imposed by statute or because he is a common carrier or because he has assumed it

1. The general law of maritime carriage has been modified by statute (see, *e.g.*, *The Harter Act*, 46 U. S. C. Secs. 190-196; Carriage of Goods by Sea Act of 1936, 46 U. S. C., Sec. 13 *et seq.*) in order to accommodate the problems of competition and uniformity in international commerce by water. This Act represent a compromise of the respective commercial and international maritime interests. See discussion, *Gilmore & Black, The Law of Admiralty*, pp. 122-124. No statute, however, has diluted the common law liability of carriers by rail, and no accommodation with competing foreign or unregulated commerce requires it. The Interstate Commerce Act (49 U. S. C., Sec. 20(11)) has reaffirmed it. See Point 3, *infra*.

by contract, must show that the loss was due to an excepted cause and not to breach of his duty to furnish a seaworthy vessel. The Edwin I. Morrison, supra, 211; The Majestic, 166 U. S. 375; Schnell v. The Vallescura, supra; The Beeche Dene, 55 F. 525. Cf. 39 Stat. 539, 49 U. S. C. §88; Uniform Bill of Lading Act, §12. See IX Wigmore on Evidence (3rd ed.) §2508 and cases cited. And in that case, since the burden is on the shipowner, he does not sustain it, and the shipper must prevail if, upon the whole evidence, it remains doubtful whether the loss is within the exception. The Folmina, 212 U. S. 354, 363; Schnell v. The Vallescura, supra, 306, 307."

POINT 2

The common law rule of carrier liability as set forth in Point 1, *supra*, applies to the carriage of perishables.

The petitioner contends that the federal common law rule of carrier liability as applied to perishables is distinguishable from the general common law rule. However, this Court has never recognized such distinction.

For example, in *Secretary of Agriculture* v. *U. S.*, 350 U. S. 162 (1956), a case dealing with eggs, this Court noted that it was "conceded" that Section 20(11) of the Interstate Commerce Act codified "the common law rule making a carrier liable without proof of negligence for all damage to the goods transported by it, unless it was affirmatively shown that the damage was occasioned by the shipper, acts of God, the public enemy, public authority, or the inherent nature or vice of the commodity." (n. 9, pp. 165-166). This Court said in respect to an analogous situation in-

volving the approval by the Interstate Commerce Commission of certain proposed tariffs:

> "At common law, proof that a case of eggs contained a specified amount of damage for which the carrier was not liable would afford no defense to a damage claim not shown to include that damage. To complete the defense, some showing that the damage claimed included the exempt damage would be required, such as evidence that all of the damage had been found and claimed (p. 167). • • •
>
> By in effect requiring a consignee to prove that his damage claim does not include the exempt damage the tolerances would impose on the consignee the burden of disproving a defense which at common law it would be the carrier's burden to establish." (p. 169)

This Court, in *Schnell* v. *The Vallescura*, 293 U. S. 296 (1934), a case involving damage to a shipment of onions, stated:

> "In general the burden rests upon the carrier of goods by sea to bring himself within any exception relieving him from the liability which the law otherwise imposes on him. This is true at common law with respect to the exceptions which the law itself annexed to his undertaking, such as his immunity from liability for act of God or the public enemy. See Carver, Carriage by Sea (7th ed.) Chap. I. The rule applies equally with respect to other exceptions for which the law permits him to stipulate. Clark v. Barnwell, 12 How. 272, 280; Rich v. Lambert, 12 How. 347, 357; The Propeller Niagara v. Cordes, 21 How. 7, 29; The Maggie Hammond, 9 Wall. 435, 459; The Edwin I. Morrison, 153 U. S. 199, 211; The Folmina, 212 U. S. 354, 361. The reason for the rule is apparent. He is a bailee entrusted with the shipper's goods, with respect to the

> care and safe delivery of which the law imposes upon him an extraordinary duty. Discharge of the duty is peculiarly within his control. All the facts and circumstances upon which he may rely to relieve him of that duty are peculiary within his knowledge and usually unknown to the shipper. In consequence, the law casts upon him the burden of the loss which he cannot explain or, explaining, bring within the exceptional case in which he is relieved from liability. See Bank of Kentucky v. Adams Express Co., 93 U. S. 174, 184; Chicago & Eastern Illinois R. Co. v. Collins Produce Co., 249 U. S. 186, 192, 193; Railroad Co. v. Lockwood, 17 Wall. 357, 379, 380." (pp. 303-304)

The rule that a carrier transporting perishables is liable regardless of fault, unless he establishes one of the exceptions, is one of broad application (*C. & O. Ry. Co.* v. *Timberlake*, 147 Va. 304, 137 S. E. 507 (1927), *C. & O. Ry Co.* v. *W. C. Crenshaw & Co.*, 147 Va. 290, 137 S. E. 515 (1927), *Perkel* v. *Pennsylvania R. Co.*, 148 Misc. 284, 265 N. Y. S. 597 (1933), *N. H. Nelson & Co.* v. *Chic. & N. W. R. Co.*, 102 Neb. 439, 167 N. W. 574 (1918), *Southern Ry. Co.* v. *Bateman Fruit Exchange*, 173 Ga. 826, 162 S. E. 112 (1931), *Akerly* v. *Railway Express Agency, Inc.*, 96 N. H. 396, 77 A. 2d 856 (1951)).

In *Southern Railway Co.* v. *Bateman Fruit Exchange*, *supra*, which involved a shipment of peaches, the Supreme Court of Georgia set forth the rule as follows:

> "• • • originally carriers were absolutely liable for the non-delivery, or delivery in bad condition, of goods entrusted to them for transportation, unless the loss or injury was caused by the act of God or the public enemy. In such cases the burden is on the carrier to show that the case is within one of the exceptions.

This general rule was afterwards extended and made applicable to shipments of perishable goods possessing inherent defects, and in these latter cases to escape liability the burden is on the carrier to show that it comes within one of these exceptions." (p. 113)

In *Perkel* v. *Pennsylvania R. Co., supra,* which involved a shipment of watermelons, the court stated:

"The law adjudges the carrier responsible, irrespective of any question of negligence or fault on his part, if the loss does not occur by the act of God or the public enemy, or fall within an excepted cause. (Merritt v. Earle, 29 N. Y. 115; Heyman v. Stryker, 116 N. Y. S. 638.)

Common carriers, holding themselves out as shippers of perishable fruit, are held to a higher degree of care than when engaged in the shipment of household goods or other articles not inherently perishable, and there is no reason why the rule as to burden of proof should not apply since the carrier has the superior ability to furnish the proof as to what caused the damage. (Fish v. Seaboard Airline Railway, supra; Pereira v. American Ry. Exp. Co., supra; Brennison v. Pennsylvania R. Co., 101 Minn. 120, 111 N. W. 945; Eockens v. United States Express Co., 99 Minn. 404, 109 N. W. 834; Ammon v. Ill. Central RR. Co., 120 Minn. 438; 139 N. W. 819; Presley Fruit Co. v. St. L., I. M. & S. Ry. Co., 130 Minn. 121; 153 N. W. 115.)" (p. 288)

In *Akerly* v. *Railway Express Agency, Inc., supra,* the Supreme Court of New Hampshire, in discussing the principles of liability involving a shipment of eggs, stated:

"'In order to defeat (the plaintiff's) right of recovery, the burden is on the defendant to disprove these facts (establishing the *prima facie* case), or to prove that the loss or damage was proximately and

> exclusively due to one of the five excepted causes * * * This presumption could not be overcome as a matter of law, by proof which tended to show that defendant was not in fact negligent unless it was sufficient to prove that the damage was due proximately and exclusively to the inherent nature of the (goods) * * *" (p. 861)[2]

The petitioner has suggested that there is a modern rule of liability which permits the carrier to exonerate itself in a case involving the transportation of perishables upon proof of freedom from negligence. This purported modern rule, asserts the petitioner, stems from the large-scale development in relatively recent years of long distance transportation of fresh fruits and vegetables. The fact is that the inferstate shipment of fresh fruits and vegetables by rail throughout the United States is, and has been, a characteristic of the railroad industry throughout this century, but that such shipments by rail have decreased in relatively recent years, rather than increased.[3]

The decisions upon which the petitioner relies as constituting a so-called "modern rule" either do not promulgate a different rule than the long established common law rule, or are based upon a misconception or misunderstanding of the authorities upon which they in turn rely.

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2. The Supreme Court of New Hampshire, in referring to *Southern Pacific Co.* v. *Itule*, which is relied upon by the petitioner in the within case, questioned the authority of that case, stating that there was no indication that the theory of the case "has been adopted by the federal courts, and the Itule case intimates that it has not" (p. 861).

3. Circular FCD-1300, issued by the American Association of Railroads, indicates that in the year 1947, 1,053,566 cars of fresh fruits and vegetables were shipped in the United States. The succeeding annual circulars show a progressive decrease, with some fluctuations, in the number of cars, and circular FCD-1920, issued January 2, 1964, shows 454,677 cars for the year 1962.

POINT 3

The rule of liability asserted by the Supreme Court of Texas in the opinion below is in accord with the bill of lading and the applicable tariff. If said bill of lading and tariff are to be interpreted as modifying the common law rule, they would be violative of the Interstate Commerce Act (49 U. S. C., Section 20(11)).

A. The bill of lading and the tariff do not affect the common law rule of liability.

The bill of lading, under which the instant shipment moved, was the Uniform Domestic Straight Bill of Lading (R. 157-167) which, since 1922, has been the form of bill of lading in general use throughout the United States. Its adoption and precise language was considered by the Interstate Commerce Commission in *The Matter of Bills of Lading*, 52 I. C. C. 671 (1919).

The brief of the Association of American Railroads (hereinafter referred to as "A. A. R.") appears to take the position that the use of this bill of lading entitles the carrier to diminish its common law liability through rules adopted in its tariff. This position is difficult to understand in view of the express language of the bill of lading in question as it relates to the context of this case.

Section 1a of the Uniform Straight Bill of Lading provides as follows:

> "The carrier or party in possession of any of the property herein described shall be liable as at common law for any loss thereof or damage thereto, except as hereinafter provided."

The exceptions of the bill of lading thereinafter provided, insofar as they relate to exemption from liability for inherent vice or defect in goods, do not in any way state or express any rule different than the common law rule. Consequently, insofar as the issues of the instant case are concerned, the express language of the bill of lading in question sets forth a liability certainly as great as that provided by the common law.

In considering and approving the very bill of lading before the court in the instant case, the Interstate Commerce Commission pointed out that the modern common law rule, as well as the old English common law, for reasons of broad public policy, rendered common carriers liable as insurers of the goods they transport, with the stated exceptions (see, *The Matter of Bills of Lading, supra,* at p. 679). The commission reviewed this bill of lading in the context of that rule of liability and expressly acknowledged that it was to be utilized for the transportation of perishable products, as well as all other products except livestock[4] (see, *The Matter of Bills of Lading, supra,* at p. 740).

Petitioner has not in this court, or in any court below, relied upon or found it necessary to refer to Uniform Freight Classification No. 4, Rule 1. It appears to have been injected into this case for the first time by the A. A. R. in its *amicus* brief (A. A. R. brief, p. 15). The reference to this rule as creating support for the petitioner's position is obscure. Insofar as damage to merchandise in transit is concerned, the Uniform Domestic Straight Bill of

4. A separate and differently worded livestock bill of lading was adopted March 15, 1922. See form in Uniform Freight Classification No. 4, p. 204.

Lading provides for full "common law" liability. Consequently, if it were of significance to pay an additional freight rate in order to secure full common law liability in respect to some other aspect of carrier responsibility, the argument of *amicus* might be relevant. In the instant case, however, it serves only to confuse.

Both this court and many other courts, in defining the carrier's liability as one independent of fault, and with exoneration only through establishing that damage falls within one of the recognized exceptions, have declared such rule in the context of the very bill of lading which the A. A. R. now argues provides some lesser liability (see, *e.g.*, *Galveston Wharf Co.* v. *Galveston, Harrisburg & San Antonio Ry. Co.*, 285 U. S. 127 (1932); *Commodity Credit Corp.* v. *Norton*, 167 F. 2d 161 (3rd Cir. 1948)).

The contention of the petitioner that it is entitled to exoneration, despite the fact that it failed to establish any recognized exception to liability, rests primarily on its interpretation of Rules 130 and 135 of the Perishable Protective Tariff No. 17. However, it was not the intention of the carriers in promulgating these rules, nor was it the intention of the Interstate Commerce Commission in approving them, to modify or reduce the common law liability of carriers, and these rules, by their express terms, do not make any such change or limitation.

Rule 130, in stating that a carrier does not "undertake to overcome the inherent tendency of perishable goods to deteriorate or decay", is merely restating, in different verbiage, the common law rule that a carrier shall not be held liable for damage which solely results from an inherent defect or vice in the goods. Rule 135, in stating that the carrier shall not be "liable for any loss or damage

that may occur because of the acts of the shipper or because the directions of the shipper were incomplete, inadequate, or ill-conceived", is merely reiterating the common law and bill of lading rule that the carrier shall not be liable for the "act or default of the shipper or owner". Neither of these rules refers to the presumptions, or burdens of proof involved in an action against a common carrier for damage to the commodity it transports. To conclude that these rules establish a principle of exoneration differing from the rules applicable to the transportation of all other commodities would do violence to the whole fabric of carrier law.

The Interstate Commerce Commission, in considering Rules 130 and 135 in *Perishable Freight Investigation*, 56 I. C. C. 449, feared that these, as well as other tariff rules, might be utilized in the very manner in which petitioner now seeks to limit its liability and to convey the impression that what was sought was an alteration of the fundamental rule of carrier liability. Thus the Commission stated that this type of rule was generally objectionable and that "nothing can be added to or subtracted from the law by limitations or definitions stated in tariffs" (p. 482). However, the Commission concluded that if the shipper directs in some measure the extent or character of the services furnished by the carrier, and damage results which was caused by his direction, it would be desirable to contain some notice of warning to the shipper to this effect in the Perishable Protective Tariff (pp. 482, 483). Consequently, a reworded version of the proposed Rule 130 was included in the tariff, only for that purpose, and the Commission further prescribed Rule 135.

It is of particular significance to point out that when adopting Rules 130 and 135, the carriers also sought to include in the Perishable Protective Tariff a provision to be known as Item 20(d), reading:

> "Nothing in this tariff shall be construed as relieving carriers from such liability as may rest upon them for loss or damage when the same is the result of carrier's negligence." (p. 481)

Finding such a clause objectionable in the tariff relating to perishables, the Commission stated:

> "Item 20(d), above quoted, is objectionable because *a carrier may be liable under common law for loss or damage which is not the result of its negligence and this item implies that there may be something in the tariff which seeks to limit such liability.*" (p. 483) (emphasis ours)

In summary, therefore, it would appear that the petitioner is urging a construction of the rules which the Commission itself, in its investigation of the transportation of perishables, expressly and emphatically rejected.

The interpretation of Rules 130 and 135 by the Circuit Court of Appeals in *Larry's Sandwiches, Inc.* v. *Pacific Electric Railway Co.*, 318 F. 2d 690 (9th Cir. 1963), relied upon by petitioner, appears to have been made without any consideration of the determination of the Interstate Commerce Commission in *Perishable Freight Investigation*, 56 I. C. C. 449 (1920). The conclusion of that court that the "provisions of the Carmack Amendment codifying the common law are given force through the Perishable Protective Tariff", is diametrically contrary to the treatment of such provisions by the Interstate Commerce Commission, whose approval of such tariff is, of course, based upon its under-

standing of the proposed tariff's purpose and meaning. A federal statute cannot be "given force" through the tariff of a carrier, nor can such tariff either add to, alter or dilute the common law.

The conclusion of the court in *Larry's Sandwiches* that a carrier of perishable goods need only prove its own compliance with the rules of the tariff and the shipper's instructions is not supported by the authorities therein cited.[5] Its citation of *Chesapeake & Ohio Ry. Co.* v. *Thompson Mfg. Co.*, 270 U. S. 416 (1926) (which states a diametrically opposed rule of carrier liability) indicates a misunderstanding of that case and apparently accounts for its erroneous decision. The plaintiff in the *Larry's Sandwiches* case did not request this Court to grant certiorari[6] and the oppor-

5. It is of interest to point out that the United States Court of Appeals, 9th Circuit, in an earlier decision (*The Daido Line* v. *Thos. B. Gonzales Corp.*, 299 F. 2d 669 (1962)) stated that a carrier was liable for damage to perishable cargo if it could not establish or explain the cause of the deterioration of the goods in its care. The court said:

> "The shipper is obliged to establish that the garlic was in good condition to make its *prima facie* case, but the carrier is burdened with proving that the garlic suffered from an inherent defect in order to bring itself within the statutory exception from liability" (p. 671). * * * "There was testimony that garlic is inherently perishable and that these defects might in some measure accelerate the natural deterioration through age. But there was also testimony that all garlic was subject to these deficiencies in some degree and that properly cared for, this cargo would have survived the trip. A higher standard of proof than this would exclude all ordinarily perishable cargo from the rule imposing liability on the carrier for unexplained deterioration of goods in its care" (p. 674).

6. "No matter how important it might be to various groups to take an appeal, it is within the power of particular parties to compromise after a doubtful decision, without regard to the effect on numerous persons who are not represented. The situation is as if a corporate reorganization could be managed in court with only two parties, while all other parties were allowed to contest the same matter

tunity of calling the matter to this Court's attention arises from the granting of certiorari in the instant case.

B. Section 20(11) of the Interstate Commerce Act (49 U. S. C.) prohibits a carrier from impairing its common law liability by "contract, receipt, rule, regulation or other limitation of any character whatsoever."

The interpretation of Rules 130 and 135 of Perishable Protective Tariff No. 17 contended by the petitioner, would violate the public policy of the United States as reflected in section 20(11) of the Interstate Commerce Act. This Act provides that a carrier shall be liable for the "full actual loss, damage or injury to property caused by it" and that such liability may not be limited by contract or tariff.[7] The petitioner's interpretation of Rules 130 and 135 would constitute a limitation by tariff of that statutory obligation.

Section 20(11) of the Interstate Commerce Act (49 U. S. C.) has been uniformly construed as codifying and imposing on the carrier its common law liability.

Secretary of Agriculture v. *U. S.*, 350 U. S. 162, 165-166, 173 (1956);
Cincinnati, N. O. & Texas Pacific Ry. Co. v. *Rankin*, 241 U. S. 319, 325, 326 (1916);
N. Y., Phila. and Norfolk R. Co. v. *Peninsula Produce Exchange of Maryland*, 240 U. S. 34, 38 (1916);

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in any other court where the property of the corporation might be found." (Trial by Combat and The New Deal, Thurman W. Arnold, 47 Harvard Law Review (1934), at p. 939.)

7. The authorities cited by the A. A. R., at p. 12 of its brief, in support of the argument that a carrier may limit its liability by contract, all preceded the adoption of the Carmack Amendment to the Interstate Commerce Act (Section 20(11)), and are, therefore, of no application.

Commodity Credit Corp. v. *Norton*, 167 F. 2d 161, 164 (3rd Cir. 1948);
Lehigh Valley v. *John Lysaght Ltd.*, 271 Fed. 906, 910 (2nd Cir. 1921), cert. den. 256 U. S. 704 (1921);
Jos. Toker Co. v. *Lehigh Valley R. Co.*, 12 N. J. 608, 97 A. 2d 598, 602 (1953);
Bird v. *Palmer*, 69 R. I. 388, 33 A. 2d 415 (1943)

The Circuit Court of Appeals in *Commodity Credit Corp.* v. *Norton, supra*, states:

> "The suggestion of the defendant that the phrase 'caused by it' as used in the Carmack Amendment changed the common law doctrine of the liability of the common carrier was refuted in Cincinnati N. O. & T. P. R. Co. v. Rankin, 1916, 241 U. S. 319, 326, 36 S. Ct. 555, 60 L. Ed. 1022, L. R. A. 1917A, 265" (n. 4, p. 164).

Mr. Justice Frankfurter, in his concurring opinion in *Secretary of Agriculture* v. *U. S., supra*, said:

> "The legal import of that amendment is to bar the Interstate Commerce Commission from legalizing tariffs limiting the common law liability of a carrier for such damage. The common law, in imposing liability, dispenses with proof by a shipper of a carrier's negligence in causing the damage" (p. 173).

Section 20(11) of the Interstate Commerce Act has been amended by Congress on a number of occasions since its original passage.[8] These amendments were adopted with full knowledge of the judicial interpretations of that Act imposing common law liability for damage to goods car-

8. See discussion of Interstate Commerce Commission in *The Matter of Bills of Lading*, 52 I. C. C. 671, at pp. 682-685.

ried in interstate commerce. What Congress has refused to do, the carrier may not accomplish by the rules of its tariff. Rules 130 and 135, if construed to permit the carrier to exonerate itself without establishing one of the common law exceptions to its insurer liability, would violate that Act.

POINT 4

Proof of the nature of the damage to a perishable does not establish the defense of inherent vice. The carrier is required to establish that an inherent defect or vice in the perishable caused the damage.

The A. A. R., in its *amicus* brief (p. 22), asserts that a *prima facie* case of inherent vice is established upon proof of the "perishability" of a commodity, and upon proof that the damage was in the nature of deterioration or decay.[9] If this argument had validity, a complete answer would be the jury's express finding that, in fact, the damage was not caused by inherent vice (R. 178, Special Issue 6). The point, therefore, is meaningless in the context of the jury's finding.

In any event, however, this argument is based upon a wholly inaccurate premise. The A. A. R. argues (p. 26), that "the shipping contract in the instant case, with respect to a perishable commodity, contains an exception from liability of injury or damage of a certain nature, namely, deterioration or decay". This is simply not the

9. The principal damage here involved was discoloration (R. 173). It is unclear how this damage qualifies as "deterioration" or "spoilage" as distinguished from other types of damage which, it is conceded, would not be subject to the rule of liability or proof contended for by the petitioner and the A. A. R.

case. The bill of lading exception is for damage occasioned by "inherent vice", not from "deterioration or decay". "Inherent vice" is a cause, and "deterioration or decay" is an effect. They cannot be equated. Thus, as this Court stated in *Schnell* v. *The Vallescura*, 293 U. S. 296 (1934), at pp. 305-306, "the decay of a perishable cargo is not a cause; it is an effect. It may be the result of a number of causes for some of which, such as the inherent defects of the cargo * * * the carrier is not liable. For others * * * he is liable."

Inherent vice, by definition, is an infirmity in the goods which must inevitably cause the particular damage during the contemplated period of transportation. Decay or deterioration might occur from inherent vice, but it also might occur from many other causes for which no exemption is provided. Consequently, if a carrier could establish an exception to its liability by proving, not the cause of the damaged condition, but rather the nature of the damage, the fundamental concept of carrier liability, and the order, and burden of proof, would be destroyed.

The authorities cited by A. A. R. do not support its argument. In each of the cases cited, as distinguished from the instant case, the exception was for the nature of a particular damage, as distinct from an exception covering specific causes of damage. Since neither under the contract of carriage herein involved, nor under *Sec. 20 (11)* of the *Interstate Commerce Act* is the carrier permitted an exemption for the nature of the damage (sometimes called an effect or result), but rather must establish a cause for which exemption is provided, these cases have no application. It is also of significance to point out that the authorities in question preceded the decision of this Court in

Schnell v. *The Vallescura*, *supra*, and are inconsistent with the determination of this Court in that case. It is of further significance to point out that the authorities relied upon by the A. A. R. reiterate the very proposition which the petitioner now seeks to deny. They hold that the carrier must establish any permissible exception to its liability and may not exonerate itself by attempting to prove freedom from negligence (*e.g.*, *The Folmina*, 212 U. S. 354 (1909)).

The petitioner (p. 19) takes a slightly different tack in arguing that proof of perishability and decay establishes inherent vice.[10] It asserts that under the authority of *F. O. Bradley & Sons Ltd.* v. *Federal Steam Navigation Co., Ltd.*, 137 Law Times Rep. 266 (1927) the perishability of a product establishes "inherent vice". That decision is both inadequately quoted and its conclusions taken out of context. Read in its unemasculated version, it was a finding of the court, upon conflicting evidence, that the apples which were damaged "were simply weaker than their neighbors or had some idiosyncrasy * * * such, that they could not stand the voyage. They decayed, not because of the ship, or of the sea, or of the route, but because they were apples which were not fit to make the voyage in an ordinary way." The court found the infirmity of the de-

10 The petitioner, in its brief (pp. 19-20), seems to indicate that the Secretary of Agriculture, in its brief to this Court in *Secretary of Agriculture* v. *United States*, 350 U. S. 162 (1956), as well as the statement of this Court in that case at p. 165, n. 9, is in agreement with its position. The contrary, however, is the fact. Even a cursory reading of the Secretary's brief, as well as the note in question, would indicate that the rule of carrier liability urged by the Secretary, and conceded by the carrier, was the traditional common law rule that exoneration can only follow proof by the carrier that damage to goods was solely occasioned by one of the recognized exceptions.

cayed apples to fall within the defense "resulting from inherent quality or vice" (p. 54a writ). The citation of this case as authority in a case where the opposite findings were made by the jury (Special Issues Nos. 1, 2 & 6, R. 176, 178), is of dubious value.

POINT 5

There is no basis in sound public policy to provide a different rule of carrier liability in respect to the carriage of perishables in contrast to the transportation of other commodities.

The general rule of carrier liability is based upon the significant premise that the carrier, in the discharge of his obligation and duty imposed upon him by law and the contract of carriage, has peculiarly within his knowledge "all of the facts and circumstances upon which he may rely to relieve him of that duty. In consequence, the law casts upon him the burden of the loss which he cannot explain, or explaining, bring within the exceptional case in which he is relieved from liability" (*Schnell* v. *The Vallescura*, 293 U. S. 296, 304 (1934)). "It is founded on a great principle of public policy; has been approved by many generations of wise men; and if the courts were now at liberty to make, instead of declaring, the law, it may well be questioned whether they could devise a system which on the whole would operate more beneficially" (4 R. C. L., sec. 176). As stated by the Interstate Commerce Commission in *The Matter of Bills of Lading*, 52 I. C. C. 671 (1919), at p. 679:

"In the celebrated case of Coggs v. Bernard, 2 Lord Raymond, 909; 1 Smith's Leading Cases, 369, Lord Holt, in quaint language, states the common-law liability of carriers as of that time to be that if 'a delivery to carry or otherwise manage, * * *' is made 'to one that exercises a public employment, * * * and he is to have a reward, he is bound to answer for the goods at all events. * * * The law charges this person thus intrusted to carry goods, against all events, but acts of God, and of the enemies of the King. For though the force be never so great, as if an irresistible multitude of people should rob him, nevertheless he is chargeable. And this is a politic establishment, contrived by the policy of the law, for the safety of all persons, the necessity of whose affairs oblige them to trust these sorts of persons, that they may be safe in their ways of dealing; for else these carriers might have an opportunity of undoing all persons that had any dealings with them, by combining with thieves, &c., and yet doing it in such a clandestine manner as would not be possible to be discovered. And this is the reason the law is founded upon in that point.' "

The public policy upon which carrier insurer liability is based, is as necessary for protection of the public in the carriage of perishables as in the carriage of other products, and the freight rates of the carrier in the carriage of perishables reflect this liability. As stated by the New York Court of Appeals in *Tierney* v. *New York Central & H. R. R. Co.*, 76 N. Y. 305, 315 (1879):

"Doubtless the defendant, as was lawful, measured the compensation it should receive in part by the hazard it incurred and the extra care and diligence imposed upon it by the fact that the articles were perishable. The obligation would not have been other or different

had there been an express agreement. Of the carrier, Lord Coke says: 'He hath his hire and thereby impliedly undertaketh the safe delivery of the goods delivered to him,' and in Hollister v. Nowlen (19 Wend. 238), the court says: 'The carrier may no doubt demand a reward proportioned to the services and the risk he incurs, and having taken it he is treated as an insurer and bound to the safe delivery of the property. But the extent of his liability does not depend on the terms of his contract. It is declared by law.' Again: 'It is not the form of the compact but the policy of the law which determines the extent of the carrier's liability'."

The petitioner asserts that the philosophy reflected in *Coggs* v. *Bernard*, quoted in *The Matter of Bills of Lading*, *supra*, is both old and extreme. However, as pointed out by the Commission in that case, under the common law, as it has developed, the application of the rule as enunciated in *Coggs* v. *Bernard* has been applied to "modern transportation conditions and practices" and "there has been little or no relaxation of the rigor of the rule of the common carrier's liability" (p. 679) (*cf.*, *Atlantic Coastline* v. *Riverside Mills*, 219 U. S. 186, 205, 207 (1911)).

Damage to perishables, whether it be termed spoilage, deterioration, or decay, may have many possible causes. A carrier may not have furnished appropriate refrigeration or ventilation; it may not have furnished a suitable refrigerator car;[11] the insulation of the refrigerator car

11. "A tabulation and descriptive statement of the insulated equipment of carriers under federal control, prepared by the Division of Operation of the United States Railroad Administration, and introduced in evidence by us; shows an utter lack of anything approaching uniformity on manner of variations in the extent and kind of insulation, in the construction of bunkers and bulkheads and in the provision

may be defective, insufficient or inefficient; decay may stem from bruising of the perishable as the result of rough handling through switching operations, violent stoppage and starting of trains, improperly maintained roadbeds, or collisions; the outside elements may have been introduced into the car through defective doors, hatchways, or other poorly insulated areas of the car supplied, or through extended stays at icing and reicing stations; fans may have been turned off by error or never turned on. In none of these areas is the shipper in a position to acquire the facts or to directly challenge the records of the carrier or its agencies.[12] Many occurrences are not reflected in a carrier's records. Failure to utilize recognized procedures in icing a bunker, or failure to manipulate a vent, or a jarring of moderate force may never find itself reported in any record whatsoever. Thus, even a jury finding that the carrier was free from negligence does not exclude the possibility that damage was occasioned through fault of the carrier in some area which was not brought to the attention of the jury because of the unequal position of the parties in dealing with the facts. If the carrier's burden of proof, therefore, is limited to establishing freedom from

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of floor racks. There can be little doubt but that many of these cars, judged by reasonable modern practice, cannot be operated with efficiency or economy" (*Perishable Freight Investigation*, 56 I. C. C. 449, 488-489 (1920)).

12. "All the consignee usually has the means of knowing is that the goods have been lost or have turned up damaged. Clearly the carrier and not the shipper is the one in the position to know, and would be able to prove most facts concerning events on the voyage. The allocation of burden of proof may make more difference than the nature of the substantive rules in the actual outcome of litigation and in the negotiating position in regard to claims settlement" (*Gilmore & Black, The Law of Admiralty*, p. 121).

negligence, rather than establishing the cause of the damage as falling within one of the exceptions, the shipper would be at the mercy of the carrier's records, or lack thereof, and the required care and fidelity of a carrier would thereby be diluted.

The carrier is generally as knowledgeable as the shipper concerning the condition of the perishable at the time of receipt by the carrier. The carrier's agents are at every shipping point; the fruits and vegetables normally move from well-defined growing areas during particular growing periods and to well-defined market areas where the carriers maintain trained inspection personnel. Weather data is available both from government sources and carrier's agents at shipping area.

Any burden of proof placed upon the shipper, based upon his knowledge of the facts, is discharged by the requirement that the shipper must establish the good order and condition of the commodity when delivered to the carrier for transportation as part of its *prima facie* case. To argue further that the carrier should be excused from establishing the affirmative defense of "inherent vice" is not only to overlook the carrier's knowledge concerning the condition of the shipment, but to disregard the more significant factor of the relationship between proof of the existence, or lack, of inherent vice and the events of transportation.

The argument of petitioner and the A. A. R. seems to suggest that a perishable product is distinctive and, therefore, calls for a special rule of carrier liability. However, all products are more or less perishable and the term "perishable", as applied to any product, is, in the end, a matter of degree. Things are perishable only in the con-

text of time and environment; even rock is perishable, else we would lack the very soil of the earth.[13]

The unspoiled freshness and high quality and the profusion and variety of perishable products available daily, throughout the year, is evidence that their safe transit is readily accomplished. No witness in the case below suggested that honeydew melons cannot be, and are not, regularly and safely transported from Texas to Chicago, or to more distant points. The petitioner's generalization, therefore, of the "notorious fact * * * that all fruits and vegetables will ultimately decay" is without significance to the issues presented by this case.

Many products of farm and orchard are staples of recognized hardiness that survive weeks and months of storage and transportation, some without any refrigeration, while others are of lesser durability. The banana, a tropical fruit, shares the markets throughout this country and the western world with countless varieties of fruits and vegetables. Citrus from California, Florida, and Texas, and apples and pears from Virginia, the Northwest, and the Northeast share the world and the domestic market with those of Chile, Argentina, Australia, New Zealand and elsewhere.[14]

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13. "soil * * * disintegrated rock" etc. (Webster's Third International Dictionary)

14. *Modern Ship Stowage*, a publication of the United States Department of Commerce, Bureau of Foreign and Domestic Commerce (1942), states:

"FRESH FRUIT CARRIED UNDER VENTILATION

Great quantities of fresh or 'green' fruits are carried today by refrigerated vessels, but there is still a considerable amount of fruit carried from certain regions in uninsulated vessels, many of

The rule that petitioner is apparently contending for is one of the broadest implication.[15] If we understand its reasoning, all a railroad need do is label an article as "perishable" or establish that it will "ultimately decay", and the defense of inherent vice is established. (The petitioner

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which were specially designed for this trade, or in ordinary cargo vessels. Apples are carried from Canada and the United States without refrigeration, and other cargoes include oranges, lemons, grapes, etc., from numerous Mediterranean ports and from the Canary Islands and other North Atlantic islands. These shipments probably comprise most of the fruit shipped in uninsulated vessels, although there are occasional shipments from the West Indies and a few other regions (p. 246).

* * *

Much fresh fruit is carried without refrigeration on short voyages such as those from Spain, Palestine, and the Canary Islands to the United Kingdom, or, in the case of some fruit such as apples, from the east coast of the United States to Europe. On the longer routes, however, such as those from the United States Pacific coast, New Zealand, Australia, Tasmania, and South Africa to the United Kingdom, and from the east and west coasts of South America to the United States and Europe, most fresh fruits can be carried satisfactorily only under refrigeration." (p. 306).

15. The reach of this argument may be surmised from the range of "perishables" included in Perishable Protective Tariff 17. Item 25880 (pp. 525-526) defines "perishable freight" as follows:

> "Perishable Freight is any Commodity which is Susceptible to Deterioration or Decay, and/or Which May Be Protected by Refrigeration, Icing, Ventilation or Against Cold, including:"

(The reference to "any" commodity which is "susceptible to deterioration" would appear to greatly broaden the item.) There follows in the definition a listing of over 150 items and categories of items, commencing with Acetic Acid, Glacial; Ale (except Ginger); Asphalt Emulsion; and ranging through Battery Separators, Candles, Canned Goods, edible; Confectionery, Fruits, canned; Grease, edible; Ink, liquid (except printer's ink); Mucilage, Oils, edible, in packages; Paper, building or wrapping, waxed and/or asphalted; Shellac, dry ground; Vegetables, canned; Vinegar, Water, Wine, etc.

does not appear to be disturbed by the incongruity of deeming the defense established in a case where the jury has found that it was not.) The undiscriminating character of this position is that, regardless of the distance, or duration of the journey, and regardless of the hardiness or lack of hardiness of the commodity, the carrier's liability is automatically reduced to that of an ordinary bailee and the shipper is deprived of his rights under the bill of lading. The distinction which the petitioner wishes to make, because of the wide range of products to which it would apply if adopted, would, in effect, destroy the common law rule of carrier liability, to the disruption and disadvantage of the shipping public of the United States.

The A. A. R. asserts (brief, p. 3) that in the year 1962 carriers paid over eight million dollars in loss or damage claims arising from the carriage of fresh fruits and vegetables.[16] If this is a high volume of claims, it is also a high volume of fault, and the amount of claim payments therefore, which stem from conceded fault on the part of the carrier, can hardly afford an argument that its obligations or burdens should be reduced. As a matter of fact, the amount of loss and damage claims paid by carriers for fresh fruits and vegetables are neither significantly different nor greater than loss or damage claims paid in the

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16. The circular of the A. A. R., No. FCD 1897, referred to by the petitioner, indicates that these payments were divided by it into 11 categories entitled: (1) "Loss Entire Package", (2) "Loss Other Than Entire Package", (3) "Improper Handling—All Damage Not Otherwise Provided For", (4) "Defective or Unfit Equipment", (5) "Temperature Failures", (6) "Delay", (7) "Theft", (8) "Concealed Damage", (9) "Train Accident", (10) "Fire, Marine and Catastrophies", and (11) "Error of Employees".

shipment of many other so-called non-perishable products. In many instances they are less.[17]

The purported distinction between perishable products and other commodities is not a real one, and the public policy upon which the common law rule of carrier liability is based, is as urgently required for the protection of the shipping public in relation to the carriage of "perishables" as to any other type of commodity.

Conclusion

It is respectfully submitted that the decision of the Supreme Court of Texas should be affirmed.

Respectfully submitted,

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17. For example, in the year 1960, as reported by circular No. FCD 1816 of the A. A. R., the loss and damage claims paid by American carriers, per one hundred dollars of revenue, for stoves and ranges was $8.02, for sewer pipes and drain tile $18.47, for furnaces and radiators $6.77, and for plumbers' goods $7.97. In comparison, the amount of loss and damage claims, per one hundred dollars of revenue, for citrus was $1.93, for fresh vegetables $3.39, for frozen foods $1.06, for meat $1.77, for fresh fruits other than citrus $3.45 and for bananas $2.94. Thus, there would appear to be no particular relationship between so-called perishability of products and the amount of loss and damage claims paid by carriers.

Certificate of Service

I hereby certify that the foregoing brief has this day been served on each party to this case by mailing copies thereof to the respective counsel of record at their post office addresses, first-class mail, postage prepaid.

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Description of *Amici Curiae*

(1) UNITED FRESH FRUIT & VEGETABLE ASSOCIATION is a national organization of more than 3.500 members, consisting of shippers, growers, wholesalers, terminal market operators, brokers, retailers, and members of allied industries. About 35% of the members are shippers; 50% wholesale distributors and suppliers; and 15% brokers, and others. Its members handle, at some point in the marketing process, about 75% of the total commercial fresh fruit and vegetable marketings in the United States. The Association has been in existence since 1903. From its inception, it has maintained an interest in the transportation problems of its membership. Its principal office is at 777—14th Street, N. W., Washington, D. C.

(2) TEXAS CITRUS & VEGETABLE GROWERS & SHIPPERS is a statewide organization, organized in 1942, with headquarters at 306 E. Jackson, Harlingen, Texas. The membership includes 122 shippers in interstate commerce of fresh fruits and vegetables and, in addition, approximately 150 growers and suppliers of equipment, services and supplies to the shipper members. A major interest of the organization includes matters, issues and policies involving transportation.

(3) CALIFORNIA GRAPE & TREE FRUIT LEAGUE is an association whose membership includes 211 growers and shippers of fresh deciduous tree fruits, berries and grapes. The membership represents more than 85% of these commodities that are shipped from California annually (approximately 30,000 carloads). A major concern of the organization is the transportation problems of its members. Its offices are at 717 Market Street, San Francisco 3, California.

(4) NORTHWEST HORTICULTURAL COUNCIL, through its members, represents the growers, packers and shippers of practically all apples produced in the States of Washington and Oregon, and more than 90% of the other deciduous fruits. This includes more than 150 firms who pack and ship fruit, and approximately 9,000 growers. Its offices are at 1002 Larson Street, Yakima, Washington.

(5) FLORIDA FRUIT & VEGETABLE ASSOCIATION is a nonprofit agricultural trade association representing growers and shippers of fresh fruits and vegetables in and from Florida. It is the major interest of its kind in the state and represents the principal growers and shippers of fruits and vegetables within Florida. A chief objective of the organization is promoting the economical development and stability of the Florida fruit and vegetable industry, and the maintenance of lawful and sound principles affecting the transportation of the products of its members. Its office is at 4401 East Colonial Drive, Orlando, Florida.

(6) INTERNATIONAL APPLE ASSOCIATION, INC. is a nonprofit membership organization incorporated under the laws of the District of Columbia. It was organized in Chicago in 1895. Its offices are at 1302—18th Street, N. W., Washington, D. C. It has about 1,300 members, representing various segments of the fruit industry throughout the country. About 20% of its members are located outside of the United States. About 45% of its members are directly connected with the fruit industry as growers and shippers, and about 30% in distribution. It is the oldest trade association in the fruit and vegetable industry and has, from

its inception, been active in transportation problems of its members.

(7) WESTERN GROWERS ASSOCIATION, with offices at 3091 Wilshire Boulevard, Los Angeles, California, was formed in 1926. It is comprised of 510 members, including 275 growers and shippers of vegetables and melons located in the States of California and Arizona. California and Arizona produce in excess of 40% of the national total of vegetables and melons, and ship in fresh form to the nation's markets annually in excess of 300,000 carloads/trucklots of these products.

(8) GROWERS AND SHIPPERS LEAGUE OF FLORIDA is an organization of growers and shippers of citrus fruits and vegetables in Florida. It is the duly authorized transportation agent of the Florida Citrus Commission and of the Florida Canners Association, and authorized representative for the Florida Citrus Mutual, a non-profit organization of growers and shippers of citrus fruits in and from Florida. Its concern in the instant litigation is with the establishment of proper principles of liability in the transportation of the products of its membership, which move throughout the country and abroad. Its office is at 45 West Central Boulevard, Orlando, Florida.

(9) SOCIETY OF AMERICAN FLORISTS AND ORNAMENTAL HORTICULTURISTS has its offices at the Sheraton Park Hotel, Washington, D. C. It is a national trade association of floriculture, representing growers, wholesalers, retailers and allied tradesmen. It is a federated-type association, representing 200 allied floral associates. The Society was organized in 1884 and chartered by Act of Congress in 1901.

It has 4,500 direct members and performs the usual duties, responsibilities and programs of a national trade association. The growing and producing areas are, for the most part, in remote locations throughout the United States, necessitating widespread use of air, rail and truck transport in the distribution of the industry's products. The Society is vitally interested in matters adversely affecting the transportation rights of its members.

(10) National Fisheries Institute, Inc. is a national trade organization representing all segments of the fishing industry of the United States, and is composed of 500 members. Its principal offices are at 1614—20th Street, N. W., Washington, D. C. The objectives of the Institute are to promote the development, operation and merchandising of fish and seafood products, and to appear before Congressional committees and executive and administrative bodies of the government in order to obtain the enactment of sound laws, rules and regulations. The litigation before the court is of vital interest to this industry because of the substantial interest of the industry in problems affecting public transportation.

(11) Eastern Freezers Association is an organization of frozen food packers situated principally on the eastern seaboard, and extending into Texas and Michigan. Among its objectives are the fostering and promotion of economical and efficient development of the industry, and the advancement of the common interests of its members through improved quality of production and efficient and safe distribution of their products. As these products are produced and shipped throughout the United States, they are vitally interested in this litigation.